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3 *E-FILED 7/21/06*
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8IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

9 SYNAPSIS, LLC,

NO. C 05-1524 JF

10 Plaintiff,

**ORDER GRANTING MOTION
TO COMPEL AND DENYING
REQUEST FOR SANCTIONS**

11 v.

12 EVERGREEN DATA SYSTEMS, INC. ET AL.,

13 Defendants.
14 _____ /

15 I. INTRODUCTION

16 Before the Court is the motion of Defendant Evergreen Data Systems, Inc. to compel
17 plaintiff Synapsis, LLC to provide further responses to interrogatories and requests for production of
18 documents.¹ The motion was fully briefed and heard by the Court on June 28, 2006. Based on all
19 papers filed to date, as well as on the argument of counsel, the Court grants the motion to compel as
20 specified below, and denies the request for sanctions.

21 II. BACKGROUND

22 Synapsis and Evergreen formerly had a business relationship under which Evergreen acted as
23 a sales agent for Synapsis's products. The relationship deteriorated, and Synapsis brought this
24 action alleging breach of contract and associated tort claims.
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28 ¹ Defendant Steven J. DeMartini has advised the Court that his companion motion to compel
is withdrawn, pursuant to an agreement reached between the parties.

1 III. STANDARDS

2 Under the Federal Rules of Civil Procedure, Rule 26(b)(1),

3 [p]arties may obtain discovery regarding any matter, not privileged,
4 that is relevant to the claim or defense of any party . . . For good cause,
5 the court may order discovery of any matter relevant to the subject matter
6 involved in the action. Relevant information need not be admissible at the
7 trial if the discovery appears reasonably calculated to lead to the
discovery of admissible evidence.8 Evidence is relevant if it has “any tendency to make the existence of any fact that is of
9 consequence to the determination of the action more probable or less probable than it would be
10 without the evidence.” Federal Rules of Evidence, Rule 401. Discovery may be limited by the court
11 for good cause shown “to protect a party or person from annoyance, embarrassment, oppression, or
undue burden or expense.” Fed. R. Civ. P. 26 (c)).12 Discovery requests for documents and tangible things are governed by Rule 34 of the Federal
13 Rules of Civil Procedure. The rule in relevant part states that,14 Any party may serve on any other party a request to produce and permit the party
15 making the request, or someone acting on the requestor's behalf, to inspect and copy,
16 any designated documents (including writings, drawings, graphs, charts, photographs,
phonorecords, and other data compilations from which information can be obtained,
17 translated, if necessary, by the respondent through detection devices into reasonably
usable form), or to inspect and copy, test, or sample any tangible things which
constitute or contain matters within the scope of and which are in the possession,
custody or control of the party upon whom the request is served.18
19 Fed. R. Civ. P. 34(a). Motions to compel are authorized by Rule 37 of the Federal Rules of Civil
20 Procedure. Fed. R. Civ. P. 37(a)(2)(B).

21 IV. DISCUSSION

22 A. Interrogatories 2, 3, 8, 9, 12, 13 & 1723 Each of these interrogatories request Synapsis to “state all facts” in support of various
24 allegations made in the complaint. Most of Synapsis’s responses begin with the phrase, “On
25 information,” and the parties’ briefing focuses largely on whether it was proper for Synapsis to use
26 that phrase. Making an allegation on “information and belief” is a practice that has arisen in the
27 context of pleadings, for the purpose of affording the pleader a measure of protection against
28 malicious prosecution claims or Rule 11 sanctions, should he or she ultimately be unable to prove

1 the allegation. In the context of these interrogatories, use of the phrase serves no purpose, but
2 neither is it the primary reason these responses are deficient. These interrogatories require
3 Synapsis to make a reasonable and good faith effort to state all the facts presently in its possession
4 as to each of the topics. If Synapsis “believes” a certain fact to be true, but is concerned that it does
5 not currently possess documents or other evidence sufficient to prove that fact, it may so state, but
6 it should also state the *factual basis* of its belief. Thus, if Synapsis means “information and belief”
7 in a literal sense, it should supply *all* the facts: what was it informed? by whom? when?

8 Synapsis’s present responses are phrased in broad, non-specific generalities that add almost
9 no meaningful information regarding the factual basis of Synapsis’s allegations. Synapsis contends
10 that most of the “hard data” is contained in documents that are in Evergreen’s possession, but even
11 without “hard data,” Synapsis could and should have made a more diligent effort to provide
12 responses as concrete and detailed as the information in its possession allowed.

13 In its opposition, Synapsis offers to provide supplementary responses, in light of its review of
14 documents produced by Evergreen. It is hereby ordered to do so.

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16 **B. Interrogatories 4 & 16**

17 These interrogatories request Synapsis to identify the intellectual property it contends it
18 owns, as referred to in the complaint. Synapsis responded by specifically identifying certain
19 trademarks, but then stated additionally that it “owns copyrights pertaining to the implementation of
20 solutions provided to Oracle customers.” Synapsis argues both that it has fully responded to these
21 interrogatories and that it should not have been forced to respond at all, because “[t]his is not an
22 ‘intellectual property’ case, *per se*.” In view of the allegations of the complaint, however, these
23 interrogatories are proper, and Synapsis must identify the intellectual property it contends it owns,
24 regardless of the fact that the complaint sounds primarily in contract.

25 The present responses are insufficient in that they fail to identify what work or works
26 Synapsis contends are copyrighted. Synapsis shall serve further responses that identify with
27 specificity any work in which it claims copyright protection.

28

1 C. Interrogatories 6, 7, 10

2 Like the interrogatories discussed in paragraph A above, these interrogatories also request
3 Synapsis to “state all facts” in support of certain of its allegations. Synapsis’s responses do
4 nothing more than rephrase the interrogatories into statement form. Synapsis again offers to
5 provide supplementary responses, in light of its review of documents produced by Evergreen. It is
6 hereby ordered to do so.

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8 D. Interrogatory 5

9 This interrogatory asks Synapsis to state all facts supporting its allegations in the complaint
10 that its work includes “trade secrets” and to identify those trade secrets, in the manner
11 contemplated by California Code of Civil Procedure § 2019. Synapsis provided no meaningful
12 response, and contends that it cannot identify its trade secrets without thereby divulging the secrets
13 and losing legal protection for them.

14 Synapsis fails to recognize that its trade secrets can and will be adequately protected during
15 the litigation process through an appropriate protective order. Notwithstanding its objections,
16 Synapsis has offered to provide supplementary responses. It is hereby ordered to do so, upon entry
17 in this action of an appropriate protective order that conforms to Local Civil Rule 79-5.

18
19 E. Documents

20 In its opposition, Synapsis asserts that it has produced all responsive documents, but its
21 responses state only that it would produce all “relevant” documents. Accordingly, Synapsis is
22 hereby ordered to serve an amended written response confirming that it has produced all non-
23 privileged, responsive documents in its possession, custody, or control. Synapsis shall also produce
24 and serve a privilege log identifying any and all documents withheld on a claim of privilege.

25
26 F. Sanctions

27 Evergreen’s request for sanctions does not comply with Local Civil Rule 7-8, which
28 requires that all sanctions requests be brought by separately-noticed motion. The request is denied.

IV. CONCLUSION

The motion to compel is granted, as specified above. The request for sanctions is denied.

Synapsis shall serve its supplemental responses within 20 days of the date of this order.

IT IS SO ORDERED.

Dated: July 21, 2006


RICHARD SEEBORG
United States Magistrate Judge

1 **THIS IS TO CERTIFY THAT NOTICE OF THIS ORDER HAS BEEN GIVEN TO:**

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8 Counsel are responsible for distributing copies of this document to co-counsel who have not
registered for e-filing under the Court's CM/ECF program.

9
10 **Dated: July 21, 2006**

Chambers of Judge Richard Seeborg

11 By: /s/ BAK